



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,163	12/31/2003	James A. Harding	249768068US	5011

25096 7590 03/12/2007  
PERKINS COIE LLP  
PATENT-SEA  
P.O. BOX 1247  
SEATTLE, WA 98111-1247

EXAMINER
----------

SHAH, AMEE A

ART UNIT	PAPER NUMBER
----------	--------------

3625

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
31 DAYS	03/12/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/750,163	<b>Applicant(s)</b> HARDING ET AL.	
	<b>Examiner</b> Amee A. Shah	<b>Art Unit</b> 3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 December 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-32 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

Claims 1-32 are pending in this action.

#### ***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1 and 2, drawn to a method for mediating among sellers in a multiple-seller marketplace comprising collecting buyer feedback data, collecting seller performance data, determining a numerical score based on the data, identifying sellers offering a selected item for sale whose score exceeds a predetermined threshold, choosing as the featured seller the seller offering the item at the lowest price, receiving a request for information about the item, serving a web page with information and an ordering control in response to the request, receiving an indication the ordering control was activated and in response, effecting ordering of the selected item from the featured seller, classified in class 705, subclass 26.

II. Claims 3-11, drawn to a method and apparatuses for responding to a request for information about an item comprising receiving a request for information about an item, identifying among a plurality of seller those that are offering the item for sale, have availability of the item over a predetermined amount, and have a seller score above a predetermined amount, selecting a featured seller as the identified seller with the lowest price and replying to the request for information with a web page containing information about the item and a control that can be activated to order the item, classified in class 705, subclass 26.

III. Claims 12-28, drawn to a method and apparatuses for rating sellers of items comprising operating an electronic sales infrastructure, obtaining first information about the performance of a seller from buyers, obtaining second information about the performance of seller from sources other than the buyer and combining the information about the seller's performance to product a numerical score for the seller, classified in class 705, subclass 26.

IV. Claims 29-32, drawn to a method and apparatuses for evaluating the performance of a seller comprising storing information relating to sales transactions, retrieving the stored information, identifying a portion of the retrieved information, presenting to the buyer a request for additional information, receiving additional information in response to the request, and generating a score based on the retrieved and received information, classified in class 705, subclass 26.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination I, directed to mediating among sellers in a multiple-seller marketplace, has separate utility such as collecting buyer feedback, collecting seller performance data and determining a numerical score, not required by invention II, and invention II, directed to responding to a request for information about an item, has separate utility such as identifying sellers whose availability level exceeds a predetermined threshold, not required by invention I. See MPEP § 806.05(d).

Inventions I and III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination I, directed to mediating among sellers in a multiple-seller marketplace, has separate utility such as identifying sellers offering the item for sale whose score exceeds a predetermined amount, receiving a request for information about an item, responding to the request with a web page with information and an ordering control, receiving indication the control was activated and in response, effecting ordering of the item, not required by invention III, and invention III, directed to rating sellers of items, has separate utility such as obtaining second information about the seller through sources other than the buyer, not required by invention I. See MPEP § 806.05(d).

Inventions I and IV are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination I, directed to mediating among sellers in a multiple-seller marketplace, has separate utility such as identifying sellers offering the item for sale whose score exceeds a predetermined amount, receiving a request for information about an item, responding to the request with a web page with information and an ordering control, receiving indication the control was activated and in response, effecting ordering of the item, not required by invention IV, and invention IV, directed to responding to evaluating the performance of a seller, has separate utility such as storing information related to sales transaction, retrieving the stored

Art Unit: 3625

information, identifying a portion of the information, and presenting to the buyer a request for additional information, not required by invention I. See MPEP § 806.05(d).

Inventions II and III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination II, directed to responding to a request for information about an item, has separate utility such as receiving a request for information about an item, identifying sellers offering the item for sale whose availability level and score exceed predetermined amounts, selecting a featured seller with the lowest price and responding the request with a web page with information and an ordering control, not required by invention III, and invention III, directed to rating sellers of items, has separate utility such as obtaining first information about the seller from the buyers, obtaining second information about the seller through sources other than the buyer, and combining the information to produce a numerical score, not required by invention II. See MPEP § 806.05(d).

Inventions II and IV are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination II, directed to responding to a request for information about an item, has separate utility such as receiving a request for information about an item, identifying sellers offering the item for sale whose availability level and score exceed predetermined

Art Unit: 3625

amounts, selecting a featured seller with the lowest price and responding the request with a web page with information and an ordering control, not required by invention IV, and invention IV, directed to responding to evaluating the performance of a seller, has separate utility such as storing information related to sales transaction, retrieving the stored information, identifying a portion of the information, and presenting to the buyer a request for additional information, receiving additional information and garnering a score, not required by invention II. See MPEP § 806.05(d).

Inventions III and IV are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination III, directed to rating items of a seller, has separate utility such as obtaining second information about the seller through sources other than the buyer, not required by invention IV, and invention IV, directed to responding to evaluating the performance of a seller, has separate utility such as storing information related to sales transaction, retrieving the stored information, identifying a portion of the information, and presenting to the buyer a request for additional information, not required by invention III. See MPEP § 806.05(d).

The examiner has required restriction between subcombinations usable together. Where applicant elects a subcombination and claims thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP

Art Unit: 3625

§ 821.04(a). Applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions require a different field of search (see MPEP § 808.02), and because the inventions have acquired a separate status in the art due to their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the



Art Unit: 3625

inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. §103(a) of the other invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amee A. Shah whose telephone number is 571-272-8116. The examiner can normally be reached on Mon.-Fri. 7:00 am - 3:30 pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3625

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AAS

March 6, 2007



YOGESH C. GARG  
PRIMARY EXAMINER  
TECHNOLOGY CENTER 3600